

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES DURRELL JACKSON,

Defendant-Appellant.

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UNPUBLISHED

August 23, 2007

No. 270014

Oakland Circuit Court

LC No. 2003-189690-FC

Before: Owens, P.J., and White and Murray, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of armed robbery, MCL 750.529, assault with intent to rob while armed, MCL 750.89, six counts of first-degree criminal sexual conduct, MCL 750.520b, conspiracy to commit first-degree home invasion, MCL 750.110a(2), first-degree home invasion, MCL 750.110a(2), and assault with intent to do great bodily harm, MCL 750.84. Defendant was sentenced to 30 to 50 years in prison for the armed robbery conviction, 30 to 50 years in prison for the assault with intent to rob while armed conviction, 30 to 50 years in prison for the first-degree criminal sexual conduct convictions, 12 to 20 years in prison for the conspiracy to commit first-degree home invasion conviction, 12 to 20 years in prison for the first-degree home invasion conviction, and six to ten years in prison for the assault with intent to do great bodily harm conviction.

On appeal, we affirmed defendant's sentences, finding that the trial court's departure from the sentencing guidelines was properly based on the excessive brutality and terrorization of multiple victims. *People v Jackson*, unpublished opinion per curiam of the Court of Appeals, issued March 15, 2005 (Docket No. 253115). The Michigan Supreme Court disagreed, finding that "the 50-point score defendant received on offense variable 7 already accounted for" the excessive brutality, violence, and terrorism, and thus, could not be used to justify a departure unless the trial court specifically found that "the characteristic was given inadequate or disproportionate weight." The Supreme Court therefore remanded for "resentencing within the appropriate sentencing guidelines range or, . . . for a statement of substantial and compelling reasons supporting the departure." *People v Jackson*, 474 Mich 996; 707 NW2d 597 (2006).

At resentencing, the trial court reinstated the sentences previously imposed, stating:

There were three victims in this matter and not just one, which is what OV7 seems to contemplate – only one victim. . . . While OV7 contemplates excessive

brutality, violence and terrorism, this Court does not believe that the fifty points OV7 adequately takes into account what happened and what was stated and what the evidence shows at trial in that OV7 – that fifty points is not adequate nor is it proportional weight in what should have been given and, therefore, that is the reason that this Court went over the guidelines. While fifty points does contemplate some of what happened, it doesn't contemplate all of what happened, and therefore this Court reinstates its sentence to you and finds that it was based on everything that happened at the trial, and had nothing to do with whether or not you actually went to trial, as was your Constitutional right.

Defendant appeals as of right, and we affirm.

Defendant's first argument on appeal is that the scoring of the offense variables was based on facts not proven to the jury beyond a reasonable doubt, in violation of *Blakely*,<sup>1</sup> and defense counsel was ineffective for failing to object to the scoring at resentencing. This issue is not properly before this Court, as we already addressed the issue of whether *Blakely* applies to the scoring in this case and determined that it does not. *People v Jackson*, unpublished opinion per curiam of the Court of Appeals, issued March 15, 2005 (Docket No. 253115). The Michigan Supreme Court remanded for resentencing within the guidelines range or for a statement of substantial and compelling reasons for the departure, *People v Jackson*, 474 Mich 996, 996; 707 NW2d 597 (2006), and the application for leave to appeal was denied in all other respects. *Id.* "When a case is remanded by an appellate court, proceedings on remand are limited to the scope of the remand order." *People v Canter*, 197 Mich App 550, 567; 496 NW2d 336 (1992) (citation omitted).<sup>2</sup>

Defendant's final argument on appeal is that the trial court improperly departed from the sentencing guidelines for reasons already considered by OV 7 or for defendant's exercise of his right to trial. We disagree. As we have noted, the Supreme Court held that the trial court's rationale for a sentence departing upwards from the guidelines was improper because the reasons articulated by the trial court were already considered under OV7. Thus, the case was remanded to resentence within the guidelines, or to articulate appropriate reasons to exceed them. *Jackson, supra*.

On remand, the trial court stated its reasons on the record for departing upward from the guidelines range. As previously discussed, the court indicated that it was departing from the guidelines range because although OV7 contemplates the effect that excessive brutality, violence and terrorism has on "a victim," given the effect the overall brutality of the events that took place had on all three victims, the characteristics of the offense were not given adequate or proportionate weight under OV7. We agree that OV7 did not encompass the multitude of acts that occurred over a two-hour period to an entire family and the likely effect such a traumatic

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<sup>1</sup> *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004).

<sup>2</sup> Moreover, because neither the law nor the facts have changed since our first decision, our prior decision is law of the case. *People v Herrera (On Remand)*, 204 Mich App 333, 340; 514 NW2d 543 (1994).

incident could have on the couple and their two-year-old son, for the rest of their lives. As Justice Corrigan so aptly put it with regard to the crimes committed by defendant,

It is beyond peradventure that objective and verifiable reasons that keenly and irresistibly grab one's attention are present on this tragic record. In my nearly fourteen years as an appellate judge, I cannot recall such abject depravity, cruelty, and sadism toward victims – a married couple and their child<sup>3</sup> – as the Court of Appeals has described. Defendant's crimes are 'off the charts' in terms of extreme brutality, terrorism, and violence. Because the trial court failed to state that the factor of excessive brutality, violence, and terrorism was given inadequate weight under the guidelines, I join in remanding for resentencing. [*Jackson, supra* (CORRIGAN, J., concurring).]

The trial court has now precisely stated this conclusion. We therefore conclude that defendant's sentences are proportional to the brutal crimes he committed, and the trial court did not abuse its discretion in departing from the guidelines range. *People v Babcock*, 469 Mich 247, 265; 666 NW2d 331 (2003).

Defendant's argument that he was punished for exercising his right to trial is also without merit. The trial court articulated on the record that it did not punish defendant in any way for going to trial. Although defendant contends that because his sentences were higher than those of his codefendants who pleaded guilty, it can be implied that he was punished for exercising his right to trial, "[s]entences must be individualized and tailored to fit the circumstances of the defendant and the case." *People v Colon*, 250 Mich App 59, 64; 644 NW2d 790 (2002) (citation omitted). In this case, there was more than enough evidence in the record – which we need not repeat again warranting defendant's longer sentences.

Affirmed.

/s/ Donald S. Owens  
/s/ Helene N. White  
/s/ Christopher M. Murray

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<sup>3</sup> They married after the events in this case.